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even if it be granted that mining timber is fuel in the sense of the Prize Regulations, cornered wood must not be declared fuel simply because it might perhaps be used as timber for mines. The officer may have made an excusable mistake, but it was not one concerning the nature of the cargo. If he nevertheless decided to seize it, this was because he interpreted the Prize Regulations incorrectly, and inadmissibly extended the conception of fuel. Incorrect interpretation of the Prize Regulations, however, can never be regarded as sufficient ground for seizure. Whether the ship's commander is at fault or not, is not the question.

Wherefore, the petitioner's claim, in so far as he, in his capacity of owner of the *Elida*, has suffered loss, appears fundamentally justified, and it need not be inquired into whether, as claimant asserts, these or other presumptions for seizure were also wanting.

#### THE GLITRA <sup>1</sup>

#### *Imperial Supreme Prize Court in Berlin*

Decided September 17, 1915

In the name of the Empire: In the prize case of the English steamer *Glitra*, home port Leith, the Imperial Supreme Prize Court in Berlin, in its session of July 30, 1915, rendered the following judgment:

The appeals of the claimants named under Nos. 9 and 12 of the disputed judgment are rejected as inadmissible; the appeals of the other claimants are rejected as unfounded. The costs of the appeal are to be borne by the claimants.

#### REASONS

On October 20, 1914, the steamer *Glitra*, belonging to the firm of Salverson & Co., of Leith, and bound with a cargo of piece goods from Leith to Stavanger, was captured by *H. M. Submarine U 17* in 50° 4' N. Lat., and 50° 14' E. Long., and sunk, with her cargo, after the crew had left the ship. In reply to the request of the Prize Court, according to Sec. 26 of the Prize Court Rules, the 13 parties mentioned in the disputed judgment as possessing interests in the cargo, claimed compensation on account of the destruction of their property. The claimants are partners of Norwegian firms; claimant No. 2 is a Danish Insurance Company, representing the rights of its Norwegian insurer.

<sup>1</sup> Translation from copy of decision furnished by the Department of State.

The Prize Court decided that the ship sunk was liable to seizure, and rejected the reclamations.

The appeal taken against this judgment is unfounded.

In the first place the Prize Court ascertained that without doubt the *Glitra* was an English ship, and that according to the circumstances the destruction of the ship was necessary in order to ensure capture. It left undecided the question, whether the goods for which claims for indemnification were entered belonged to neutrals, because it came to the conclusion that even if this were proved in the affirmative, a claim for compensation did not exist. It is stated as the reason for this that the question under discussion is not decided either in the Prize Regulations nor in international agreements, namely, in the Declaration of London, as is clear from the document itself and the history of its origin. Opinions are divided. In the French memorandum presented to the Conference of London it is declared that the owners of neutral cargoes have no claim for indemnity, because if the captor considers the destruction of the prize as necessary for military reasons it is an act of war, while the English memorandum acknowledges the claim, if it is not for contraband, because a non-prohibited cargo on board a hostile ship is not liable to seizure. The basis leading for the preparatory discussion of the conference of London

Considering the principle that neutral goods shipped on vessels flying an enemy's flag are not subject to seizure, is the owner of certain goods forming part of the cargo of a vessel destroyed, entitled to claim indemnity, or is the destruction of the ship in such cases an "act of war" which does not obligate the belligerent nations to the payment of an indemnity?

was debated, without an agreement being reached. Quite the predominating point of the debates was the question of the admissibility of the destruction of neutral vessels which were liable to seizure. In mitigation of such a case, Germany was in favor of allowing the neutrals a right to indemnity for goods not liable to seizure.

Japan only expressed an opinion regarding neutral goods on board a destroyed hostile vessel, namely, in conformity with the standpoint taken by England. There is nothing to support the assertion that Germany nevertheless, under these circumstances, was in favor of laying down as a principle of prize law, that in case of the destruction of a hostile ship the owner of the neutral cargo should have a claim for compensation. An argument in favor of this might at the most be found in

par. 114 of the Prize Regulations as it is there apparently presumed that when a vessel is destroyed compensation is always to be given for the destruction at the same time of the innocent portion of the cargo. This argument is, however, not sufficiently convincing, for it is evident that par. 114 treats only of the destruction of neutral ships. Preceding and succeeding provisions of the Prize Regulations also refer to such a case.

This is to be agreed to in the issue.

The question is whether in the case of the legal destruction of a hostile ship, compensation is to be made for the goods of neutrals which are lost with the ship. It is clear that an express instruction upon this point is contained neither in the Prize Regulations nor in the Declaration of London. But the Prize Regulations do not state anything about it even indirectly. The claimants seek to find such an instruction in par. 114 of the Prize Regulations. The judge of the lower court was right in rejecting this contention, even if his reasons are not always to be agreed with. The commander is therein instructed, before he decides upon the destruction of a ship, to consider whether the injury to be done to the enemy balances the compensation to be paid for the destruction of the innocent portion of the cargo. At the same time reference is made in brackets, amongst other things, to par. 18, which deals with the capture of hostile ships and directs what portion of the cargo is likewise liable to seizure. This indeed conveys the idea that the compiler of the Prize Regulations takes in par. 114 the standpoint that even in the case of the destruction of a hostile vessel indemnity is to be paid for the innocent portion of the cargo. It must also be admitted that this reference confused the holding of the lower court, if it presumed that par. 114, as well as the preceding and following regulations, refer only to the destruction of neutral ships. Nevertheless, the importance which the claimants seek to attach to it cannot be given to this paragraph. Interpreted according to their contention, it would to a certain extent contradict what the Prize Regulations prescribe in the paragraph immediately adjoining. As is clearly shown there, the Prize Regulations do not prescribe that compensation is to be granted in every case for the destruction of goods not liable to seizure, since in the case of the legal destruction of a neutral ship compensation is only prescribed for the destruction at the same time of innocent goods, in as far as they are neutral goods, but not for hostile goods, which, under the protection of the neutral flag, are likewise not liable to seizure. In addition, there are also hostile vessels which are not liable to capture, and therefore are not to be seized;

so that if by chance,—for instance, on account of a pardonable error—such a vessel should nevertheless be destroyed, the question might arise whether on account of the compensation to be paid for values destroyed with it, a distinction should not be made between neutral and hostile property, for which reason it might seem advisable to instruct the commanders of men-of-war to take into account such considerations as are laid down for them in par. 114. Above all, it is of paramount importance that par. 114 be not *sedes materiæ*, and therefore, even supposing that the compiler of the Regulations was of the opinion that in the case of the legal destruction of a hostile ship claims for compensation could be sustained for neutral goods, it would be incorrect to regard his opinion as a definitive decision of this at least doubtful, and at any rate disputed but still open question.

As Wehberg,<sup>2</sup> correctly points out, Heilfron<sup>3</sup> goes too far when he wishes to give to the Prize Regulations the importance only of a command given by the Kaiser to the commanding officers of the Navy. The Prize Regulations contain to a great extent positive law. But with regard to the precise question under dispute, Heilfron's characterization is correct. This par. 114 is indeed only a command to the commanders of men-of-war. The Commander-in-Chief but not the legislator speaks. He does not desire to make substantive law and does not do so.

Thus obliged to revert to the most general legal principles in connection with the general laws of war, it is absolutely evident that a claim in favor of the neutrals does not exist, if the destruction of the prize was justified by the circumstances. (Par. 112, Prize Regulations.)

The seizure and capture of hostile ships is an admissible act of war against other states which is sanctioned by international law. Claims for compensation either from members of hostile or neutral states cannot arise in every case. It is true that according to Article 3 of the Declaration of Paris, neutral property (which is not contraband) cannot be seized even on hostile ships. Therefore, it is not even liable to seizure if the ship is brought into port. But there can be no question of the parties interested in the cargo having a claim for compensation on account of the injury caused by the seizure of the ship, the interruption of the voyage, or the conveyance to a different destination to what was intended. There is also just as little claim for compensation if the goods themselves suffer injury in consequence of the seizure of the ship; for

<sup>2</sup> *Österreich. Zeitschrift für öffentliches Recht*, II, 3, p. 282.

<sup>3</sup> *Jur. Wochenschrift*, 1915, p. 486.

instance, if on account of an accident they are lost during the subsequent voyage of the prize. Since seizure is a legal act, there is no legal basis whatever upon which to found an injury to the goods, which the neutrals have, moreover, themselves caused by entrusting their property to an endangered ship. Therefore, since seizure is a legal act of war, there is no legal basis for establishing the injury to the goods, even if they are lost through an act of war directed against the ship when owing to the circumstances such an act must necessarily also be directed against the cargo.

The legal question which here arises can also arise under the conditions of land warfare. It can and may not seldom happen, that, for instance, during the bombardment of a fortified or defended place, the property of neutrals also suffers injury. But even in land warfare, in which private property is much more protected than in war at sea, there can be no question in such a case of a liability on the part of the belligerent states to indemnify even the neutrals. Compare Article 3 of Convention IV of the Second Hague Conference; Geffcken by Heffter, *Völkerrecht*, Sec. 150, note 1 (incorrect, at least insufficient, *viz.*, the text by Heffter); Calvo, *Droit international*, IV, 2250-2252; Bonfils, *Völkerrecht*, 1217; Bordwell, *Law of War*, p. 212.

In regard particularly to the conditions of naval war, however, Article 3 of the Declaration of Paris gives protection neither in general nor specifically to neutral property against the actions of the belligerents due to the necessities of war. The purpose of Article 3 of the Declaration of Paris was to extend protection to neutral property in an enemy ship which, under the prize law as it existed prior to the Declaration, was subject to capture. What the necessities of war demand must be allowed to take place, whether neutral property is on board the ship or not. If, according to Article 2 of the Declaration of Paris, the neutral flag protects enemy property, this does not mean, that, *vice versa*, neutral property protects the enemy ship, and protects it, indeed, not only against destruction but also in many cases against every exercise of prize law.

As far as can be seen up to the most recent time, no one has ever disputed this holding. Compare, *Entsch. des franz. Conseil d'Etat* of May 21, 1872 in Dalloz, *Jurisprudence générale*, 1871, III, No. 94, in the prize case of the *Ludwig and Vorwärts*; Dupuis, *Le droit de la guerre maritime*, 1899, p. 334; de Boeck, *De la propriété ennemie privée sous pavillon ennemie*, Sec. 146; Bordwell, *Law of War*, p. 226; Wheaton, *International Law*, 4th ed., p. 507, Sec. 359e; Oppenheim, *International*

Law, II, 201 ff.; Calvo, *Droit international*, V, 3033, 3034; Hall, *International Law*, 5th ed., p. 717 f.

The claimants' assertion that the decision of the French Prize Court in the case of the *Ludwig and Vorwärts* was almost universally attacked in literature, has, apart from the quotations from the recent literature (Wehberg and Schramm; the quotation from Hall, p. 187, see above, is incomprehensible) remained unproved and must be regarded as incorrect. Only very recently, especially in Germany, has there developed the theory that generally in the case of the destruction of innocent goods the highest principle prescribes the obligation of granting compensation absolutely or in so far as innocent goods may have been destroyed, and absolutely or in so far as neutral goods may have been destroyed. Compare Schramm, *Prizenrecht*, p. 338 f.; Wehberg, *Seekriegsrecht*, p. 297 Anm. 3 & 4, and *Österr. Zeitschrift für öffentliches Recht*, *op. cit.*; Rehm, *Deutsche Juristenzeitung*, 1915, p. 454.

In consequence, the general obligation of granting compensation is regarded as a foregone conclusion, without giving any reason to support it, and when it is subsequently attempted to bring forward a reason, it does not, when compared with the foregoing arguments, appear convincing. Even the argument that land warfare must be confined locally to the territories of the belligerents while the ship may sail over the wide seas, cannot alter the finality of the latter conclusion. An enemy ship is subject to attack and eventually to defeat everywhere on the high seas in conformity with the perhaps regrettable but nevertheless valid state of international law. Finally, as soon as a ship enters the high seas, she becomes a portion of the territory of her state, into which the neutral having loaded his goods on board a belligerent vessel for the purpose of conveying them over the sea, has brought them of his own free will.

In conclusion, the proceedings are not defective because, as objected to in the appeal, the Prize Court omitted to decide whether the goods which are the object of the reclamations are liable to seizure or not. It is the object of Sec. 1 of the Prize Court Rules to stipulate the exact subject of the jurisdiction of the Prize Court, and if Sec. 2 prescribes on this account what the decision must embrace, this serves only to lay down the limits within which the court must remain, not, however, to prescribe that in each individual case a decision must be rendered concerning the questions named, should they be not material to the decision of the case.

The claimants under 9 and 12, although they were requested to do so, did not pay in advance the costs which were demanded of them. It is therefore unnecessary to enter into the consideration of their legal claims.

# THE MARIA <sup>1</sup>

## *Imperial Supreme Prize Court in Berlin*

Decided October 5, 1915

The steamer *Maria*, with a cargo of wheat, en route from Portland, Oregon, to Belfast and Dublin, was captured on September 21, 1914, at 1° 49' S. lat., 31° 50' E. long., by *H. M. S. Karlsruhe*. The ship's papers were in order and showed it to be a Dutch ship owned by the Holland Gulf Stoomvaart Maatschappij, and that on September 17, 1912, it had been chartered for a term of five years to the English firm of Watson, Munro & Co., Ltd., of Cork, with branches at Belfast and Dublin, who subchartered the vessel, for the present trip, to Kerr, Gifford & Co., of Portland, Oregon. According to the bill of lading and the manifest, the cargo consisted of 84,860 sacks of wheat, whereof 40,974 were bound directly for Belfast, while 43,886 were destined for Dublin. The bill of lading read "to order." Considering that the cargo consisted of conditional contraband (Prize Regulations, Sec. 23, No. 1) and that Belfast, whither it was bound, serves the English forces as a base of operations and supply (Prize Regulations, Secs. 32, 33 d); considering, furthermore, that the vessel, by stopping on the way, had knowledge of the breaking out of the war and of the contraband character of its cargo, and was in a position to discharge it at a neutral port (Prize Regulations, Sec. 44), the *Maria* was seized and the commander proceeded to destroy it, because the captured vessel could not follow the warship without risk of being taken away from the latter, inasmuch as the proximity of enemy cruisers gave grounds to apprehend such recapture, and the *Karlsruhe* could not spare an adequate prize crew and, therefore, an attempt to bring in the prize would have jeopardized the success of the warship's undertaking (Prize Regulation, Sec. 113 b, β-δ). The cargo was sunk with the vessel.

The Dutch ship-owners put in a claim for indemnity for the damages caused them through the destruction of their ship.

<sup>1</sup> Translated from the *Hanseatische Gerichtszeitung Hauptblatt*, and the *Zeitschrift für Völkerrecht*, Vol. IX, No. 3, p. 413.